

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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KELLY MANTERIS,

Plaintiff,

vs.

WAL-MART STORES, INC., A
Delaware corporation, et al.,

Defendants.

2:11-CV-00045-PMP-PAL

ORDER RE: DOC #91

Before the Court for consideration is Plaintiff's fully briefed Motion in Limine to Exclude (11) to Exclude Evidence of (A) Insurance and Physicians' Liens Under Fed. R. Evid. 403 and the Collateral Source Rule;(B) Arguments or Evidence Asserting "Medical Build-Up" or "Attorney Driven Litigation;" (C) Arguments or Evidence Addressing When Plaintiff's Counsel was Retained; (D) Argument or Evidence Relating to Allegations of Plaintiff's Secondary Gain; and, (E) Evidence or Comments by Wal-Mart Stores, Inc.'s Experts Relating to Ms. Manteris' Credibility (Doc. #91).

By this Motion, Plaintiff seeks to preclude admission at trial of four categories of evidence:

1. Evidence of Plaintiff's Physician's Liens,
2. Evidence or Argument that Plaintiff retained counsel before seeking medical treatment,
3. Expert testimony regarding Plaintiff's credibility, and
4. Evidence or argument of a secondary gain motivation.

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1 The Court hereby enters the following rulings regarding each of the sub-
2 categories of relief requested in Plaintiff's Motion:

3 1. The Court finds evidence of Plaintiff's Physician Liens should be excluded
4 from evidence before the jury at trial. In accord with Nevada's Collateral Source Rule, and
5 because evidence of Plaintiff's physician liens is irrelevant to whether Plaintiff mitigated
6 damages and also is irrelevant to the issue of whether Plaintiff's medical care was
7 necessary.

8 **IT IS THEREFORE ORDERED** that Plaintiff's Motion in Limine is
9 **GRANTED** to the extent it seeks to exclude evidence of Plaintiff's physician liens.

10 2. While it appears that Defendant consulted with an attorney before seeking
11 medical care, there is no evidence before the Court that Plaintiff's attorney directed her
12 medical care for a "litigation driven medical build-up." Whether Plaintiff received medical
13 treatment and incurred medical expenses which were not necessary can't be determined
14 from the medical expert testimony proffered at trial. The timing of the retaining of
15 Plaintiff's attorney is simply not relevant.

16 **IT IS THEREFORE ORDERED** that Plaintiff's Motion in Limine is
17 **GRANTED** to the extent it seeks to exclude evidence or argument that Plaintiff retained
18 counsel before seeking medical treatment.

19 3. Plaintiff next argues that Defendant should be prevented from eliciting
20 expert testimony regarding Plaintiff's credibility. As a general proposition, of course, such
21 testimony would be improper. However, on the record thus far established in this case, it is
22 unclear as to precisely what specific testimony of Defendant's experts Plaintiff seeks to
23 exclude. For example, Defendant's experts clearly would not be precluded from offering
24 testimony concerning Plaintiff's recitation of her pre-medical history. If all of the evidence
25 in the case demonstrates that Plaintiff gave false testimony regarding her medical history to
26 Defendant's medical experts, such testimony would be admissible and subject to argument

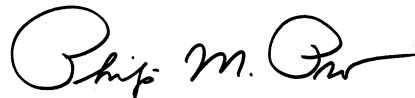
1 by counsel on the question of Plaintiff's credibility. Additionally, Defendant's medical
2 experts could also explain the degree to which they relied upon Plaintiff's statements
3 informing their medical opinions. This is far different from Defendant's experts opining
4 that Plaintiff is a "liar" or in some other argumentative manner offering a pejorative
5 characterization of her credibility. The Court will therefore deny Plaintiff's Motion in
6 Limine to Exclude Defendant's Experts Testimony Regarding Plaintiff's Credibility to the
7 extent outlined above and will defer further ruling on any testimony of Defendant's experts
8 in this area until the time of trial at which point an appropriate evidentiary objection may be
9 asserted by counsel for Plaintiff and the Court will be in a position to rule on such objection
10 in the context of the overall presentation of evidence at trial.

11 **IT IS SO ORDERED.**

12 4. The final phase of relief requested by Plaintiff's Motion in Limine is not
13 capable of pretrial determination at this stage. The Court cannot determine whether
14 Defendant has or intends to offer evidence at trial of a secondary gain motivation on behalf
15 of Plaintiff. Therefore, the Court will DENY this portion of Plaintiff's Motion in Limine
16 without prejudice to renew the argument at the time of trial in the context in which any
17 evidence of secondary gain motivation is offered by Defendants.

18 **IT IS SO ORDERED.**

19 DATED: December 19, 2012.

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21 PHILIP M. PRO
22 United States District Judge
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